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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

TREVON COLE,

Defendant and Appellant.

2d Crim. No. B213136
(Super. Ct. No. F423666)
(San Luis Obispo County)

Trevon Cole appeals from the judgment entered following a court trial in which he was determined to be a mentally disordered offender (MDO). (Pen. Code, § 2962 et seq.)¹ Appellant claims that the evidence does not support the finding that his severe mental disorder was a cause of or an aggravating factor in the commission of the MDO offenses. (§ 2962, subd. (c).) We affirm.

Facts and Procedural History

In 2003, appellant was sentenced to five years eight months state prison for assault with a deadly weapon likely to inflict great bodily injury (ADW; § 245, subd. (a)(1)), possession of a weapon (§ 12020, subd. (a)(1)), and assaulting a non-confined person (Welf. & Inst. Code, § 1768.8, subd. (b)). Appellant

¹ All statutory references are to the Penal Code unless otherwise specified.

committed the ADW by tying up a rock in a piece of a towel and hitting the victim during a gang-related fight. Several months later, appellant beat a California Youth Authority counselor with a plaster hand cast. It was a sudden, unprovoked attack.

On October 8, 2008, the Board of Prison Terms (BPT) determined that appellant was an MDO and committed him to Atascadero State Hospital for treatment. Appellant petitioned the superior court for trial and waived jury.

(§ 2966.)

Doctor Sylvia Askin, a psychiatrist at Atascadero State Hospital, testified that appellant suffered from a "personality change disorder, personality change due to head trauma disinhibited, aggressive type," a severe mental disorder. The medical records showed that appellant sustained a head injury at age seven, resulting in temporal lobe damage and a personality change. From age nine to the present, appellant suffered rage and anger attacks, violently assaulting peers, students, and counselors.

Doctor Askin opined that appellant met all the MDO criteria and posed a substantial danger of physical harm to others by reason of the severe mental disorder.²

Cause or Aggravating Factor

Appellant complains that Doctor Askin did not state with "certitude" that the severe mental disorder was the cause of the underlying offense. The MDO

² The six criteria for an MDO commitment are: the prisoner (1) has a severe mental disorder; (2) used force or violence in committing the underlying offense; (3) the severe mental disorder was a cause or an aggravating factor in the commission of the underlying offense; (4) the disorder is not in remission or capable of being kept in remission without treatment; (5) the prisoner was treated for the disorder for at least 90 days in the year prior to his parole; and (6) the prisoner poses a serious danger of physical harm to others by reason of the disorder. (§ 2962, subd. (d)(1); *People v. Merfield* (2007) 147 Cal.App.4th 1071, 1075, fn. 2.)

statute, however, requires only that the severe mental disorder be "one of the causes of or was an aggravating factor in the commission of the crime for which the prisoner was sentenced to prison." (§ 2962, subd. (b).)

Doctor Askin could not say whether the severe mental disorder was the direct cause of the ADW because appellant tied a rock in a towel before striking the victim. It involved an element of planning which could be attributed to a personality disorder, a disorder that does not come within the MDO statute.³ Doctor Askin testified that it was "probably safe to assume" that the mental disorder was an aggravating factor because the mental disorder created disinhibition and lowered appellant's threshold to commit the offenses. The violent behavior was consistent with the medical records which described appellant as "repetitively assaultive, abusive, [and] non-compliant in his behavior."

Doctor Askin's written report concluded that the severe mental disorder was a cause of or an aggravating factor in the commission of the underlying offenses. Referring to her report, the doctor stated that one of the hallmarks of frontal lobe damage is disinhibition and poor judgment which accounts for the violent behavior.⁴ Even with medication, appellant suffers anger and rage

³ Appellant does not dispute the finding that he suffers from a severe mental disorder. Section 2962, subdivision (a) defines "severe mental disorder" as "an illness or disease or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior; or that demonstrates evidence of an acute brain syndrome for which prompt remission, in the absence of treatment, is unlikely. The term 'severe mental disorder,' as used in this section, does not include a personality or adjustment disorder"

⁴ Doctor Askin was asked about another evaluator's report (Doctor Hoodkah) which attributed the offenses to a personality disorder. Doctor Askin stated that "what we are dealing with is personality change due to head [trauma] and not personality disorder." The doctor explained that somebody with a "severe personality disorder would not behave like Mr. Cole. Somebody with a severe personality disorder

attacks and "it takes him hours to calm down." Doctor Askin stated that appellant's "problem is typical in frontal lobe damage and [we] see behavior that's out of control. The frontal lobes are the emotional control center. They are [in]volved in problem solving and strategizing and judgment and planning and spontaneity impulse control"

Doctor Askin testified that the severe mental disorder was not in remission, that appellant refused to take his medication or participate in treatment groups, and that appellant is "an emotional, unstable man who is very prone to act on impulses and whose potential for dangerous and violence continues to exist unabatedly."

As in every substantial evidence case, we view the evidence and draw reasonable inferences therefrom in favor of the MDO order. (*People v. Miller* (1994) 25 Cal.App.4th 913, 919-920.) We may not reweigh the evidence or substitute our judgment for that of the trial court. (*People v. Clark* (2000) 82 Cal.App.4th 1072, 1082-1083.) The evidence supports the trial court's finding that the severe mental disorder was a cause or an aggravating factor in the commission of the MDO offenses. (*People v. Valdez* (2001) 89 Cal.App.4th 1013, 1018; *People v. Bowers* (2006) 145 Cal.App.4th 870, 879 [single psychiatric opinion constitutes substantial evidence].)

The judgment (MDO commitment order) is affirmed.

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would not have stayed in institutions since age nine. . . . [L]et's face it, the majority of kids and juveniles, they want to get out again and, therefore, they can adapt their behavior in such a way that that the juvenile justice system releases them and then they might re-offend and come back again. ¶] But the behavior we see with Mr. Cole is really – he does not seem to be having any control over it and [those suffering] personality disorders do have a control over it."

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Jac A. Crawford, Judge
Superior Court County of San Luis Obispo

Rudy Kraft, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan D. Martynec, Supervising Deputy Attorney General, Ropbert M. Snider, Deputy Attorney General, for Plaintiff and Respondent.